

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
Request for Review by )  
Waldwick School District ) File No. SLD-256981  
Waldwick, New Jersey )  
Schools and Libraries Universal Service ) CC Docket No. 02-6  
Support mechanism )

**ORDER**

**Adopted: November 4, 2003**

**Released: November 5, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 The Telecommunications Access Policy Division has under consideration a request filed by Bergen County Technical Schools on behalf of Waldwick School District (Waldwick), Waldwick, New Jersey (Appellant).<sup>1</sup> Appellant seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject an application from Waldwick in Funding Year 2002.<sup>2</sup> The application was rejected because there was no binding contract in place for the funding requested. For the reasons set forth below, we deny the Request for Review.

2 Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, the applicant must file with SLD, for posting on its website, an FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and

<sup>1</sup> Letter from, John A. Serapiglia, Jr., Bergen County Technical Schools, on behalf of Waldwick School District, to Federal Communications Commission, filed January 28, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Request for Review.

<sup>3</sup> 47 C.F.R. §§ 54.502–54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> 47 C.F.R. § 54.504(b).

submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts," as defined by the Commission's rules.<sup>7</sup>

3 The Commission's rules specifically state that the FCC Form 471 shall be submitted "upon signing a contract for eligible services."<sup>8</sup> The FCC Form 471 instructions state that Block 5 of the form should include the name of the service provider that will be providing the service and information about each separate contract or service agreement.<sup>9</sup> Specifically, the instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.<sup>10</sup> There are two exceptions, however, for tariffed services and for certain month-to-month services.<sup>11</sup> If the services are month-to-month and a signed contract is unnecessary under program rules, applicants can instead submit copies of standard monthly bills as proof that they have binding, legal arrangements with service providers.<sup>12</sup> In addition, applicants are instructed to indicate that such situations exist by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471.<sup>13</sup>

4 In prior funding years, Waldwick received Internet access from the service provider Intac Access Corporation.<sup>14</sup> At the time of filing its application for discounts from the schools and libraries universal support mechanism, the Waldwick school board was considering switching its Internet access service to a different service provider, Bergen County. Waldwick believed that Bergen County would become the Internet access service provider by the start of the funding year. However, the final agreement had not yet been approved by the school board and was, therefore, unsigned and not valid.

5. The record shows that Waldwick filed its FCC Form 471 on January 18, 2001.<sup>15</sup> On the form, Waldwick listed Bergen County as the Internet access service provider for Funding Year 2002.<sup>16</sup> Waldwick listed Bergen County as the provider and it provided a contract

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<sup>6</sup> 47 C.F.R. § 54.504(b)(4)

<sup>7</sup> 47 C.F.R. §§ 54.511(c)

<sup>8</sup> *Id.*

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471 Instructions) at 19

<sup>10</sup> *Id.* ("Signed contracts: You MUST have a signed contract (or a legally binding agreement between you and your service provider preparatory to a formal signed contract) for all services you order on your Form 471...")

<sup>11</sup> *Id.* ("for all services you order on your Form 471 except. *Tariffed services* Telecommunications services that you purchase at prices regulated by your state regulatory commission and/or the FCC, which do not require a signed, written contract *Month-to-Month Services* Month-to-Month services which do not require a signed, written contract Your billing arrangement signifies that you are receiving your services on a month-to-month basis.")

<sup>12</sup> *Id.* at 20

<sup>13</sup> *Id.*

<sup>14</sup> Request for Review

<sup>15</sup> See FCC Form 471, Waldwick School District, filed January 18, 2001 (Waldwick Form 471)

<sup>16</sup> Waldwick Form 471 (FRN 643475)

number.<sup>17</sup> Furthermore, Waldwick listed the start of the school year – which had not yet arrived – as the date of the new contract.<sup>18</sup> Waldwick then attached an unsigned contract form between Waldwick and Bergen County.

6 Subsequently, the school board did not finalize selection of the proposed new service provider, Bergen County.<sup>19</sup> As a result, Waldwick continued to receive service from the original service provider, Intac Access Corporation. Bergen County sent SLD a letter explaining the circumstances and requesting a change of the service provider on the application from Bergen County to Intac Access Corporation.<sup>20</sup>

7 Upon reviewing the application and finding the incomplete contract, SLD rejected the funding request as providing “insufficient documentation.”<sup>21</sup> Waldwick appealed the decision, which was denied by SLD.<sup>22</sup> SLD reasoned that there had been no binding agreement in existence at the time that the Form 471 was filed.<sup>23</sup> The instant appeal was then filed.<sup>24</sup>

8 The Appellant argues that SLD incorrectly denied the funding request because there was a binding agreement in effect at the time the application was filed.<sup>25</sup> The Appellant notes that Waldwick had a month-to-month contract with Intac Access Corporation at the time of the application, and was therefore not required to submit a contract for the services requested.<sup>26</sup> We note, however, that Intac Access Corporation was not listed as the service provider on the application, Waldwick did not indicate that a month-to-month contract was in effect in Item 15 of the FCC Form 471, and Waldwick did not include copies of standard monthly bills as proof of a binding, legal arrangement between Waldwick and Intac.<sup>27</sup> Instead, the record shows that Waldwick listed Bergen County as the service provider, and that Waldwick did not have a signed, binding contract with Bergen County.<sup>28</sup> Thus, SLD was correct to conclude that there was no binding agreement in existence between Waldwick and the service provider listed on the FCC Form 471 application. It was Waldwick’s responsibility to provide SLD with accurate information regarding its agreement with the relevant service provider on the FCC Form 471

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<sup>17</sup> *Id*

<sup>18</sup> *Id*

<sup>19</sup> See Request for Review

<sup>20</sup> Letter from John A. Serapiglia Jr., Bergen County Technical Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated July 12, 2001

<sup>21</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Serapiglia, Waldwick School District, issued August 7, 2001 (Funding Commitment Decision Letter)

<sup>22</sup> Letter from Robert J. Aloia, Waldwick Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed August 16, 2001

<sup>23</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert Aloia, Waldwick Board of Education, issued November 19, 2001 (Administrator’s Decision on Appeal).

<sup>24</sup> Request for Review

<sup>25</sup> *Id*

<sup>26</sup> *Id*

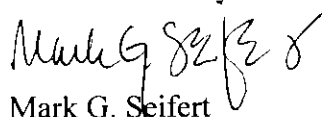
<sup>27</sup> Waldwick Form 471

<sup>28</sup> Waldwick FCC Form 471

application, and such information was not provided. Therefore, we deny the Request for Review

9        ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Bergen County Technical Schools on behalf of Waldwick School District, Waldwick, New Jersey, on January 28, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark G. Seifert", with a stylized flourish at the end.

Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau